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CORPORATE INTELLECTUAL PROPERTY DEPARTMENT**

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TO: MAIL STOP 16  
DIRECTOR OF THE USPTO  
U.S. PATENT AND TRADEMARK OFFICE

FROM: KATHRYN LAPPEGARD

RE: U.S. PATENT APPLICATION SERIAL NO. 10/606,877  
ATTORNEY DOCKET NO. 1437

DATE: 01/22/07

FAX NUMBER: (571) 273-6500

NUMBER OF PAGES FOLLOWING THIS SHEET: 20

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PTO/SB/97 (09-04)

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46,857

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PTO/SB/21 (08-04)

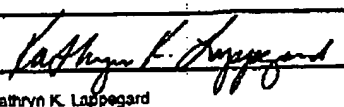
Approved for use through 07/31/2008. OMB 0651-0031

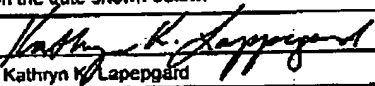
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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/608,877	
	Filing Date	06/25/2003	
	First Named Inventor	Fred R. Wolf	
	Art Unit	1615	
	Examiner Name	Ahmed, Hasan Syed	
Total Number of Pages in This Submission	19	Attorney Docket Number	1437

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input checked="" type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): 1) Copy of Documents filed 01/19/07
Remarks _____		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm	Pioneer Hi-Bred International, Inc.		
Signature			
Printed Name	Kathryn K. Lapepgard		
Date	January 22, 2007	Reg. No.	46,857

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Signature			
Typed or printed name	Kathryn K. Lapepgard	Date	January 22, 2007

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No. : 10/606,877 Confirmation No. : 5242  
Applicant : Fred R. Wolf  
Filed : 06/25/2003  
TC/A.U. : 1615  
Examiner : Ahmed, Hasan Syed  
Docket No. : 1437  
Customer No. : 27310  
Title : Method of Improving Animal Tissue Quality by  
Supplementing the Animal Diet with Mixed Tocotrienols

Mail Stop 16  
Director of the USPTO  
P.O. Box 1450  
Alexandria, VA 22313-1450

REQUEST FOR REFUND  
(IMPROPER CHARGE OF DEPOSIT ACCOUNT)

I. REFUND REQUEST

This is a request for refund, with respect to the charge to Deposit Account 16-1852, for the above-identified application.

II. FEES CHARGED FOR WHICH REFUND REQUESTED

Extension of Time

Three Months

\$1,020

Serial No. 10/606,877  
Request for Refund Dated January 22, 2007

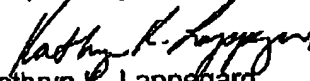
### III. EXPLANATION OF WHY CHARGE IS IN ERROR

On January 19, 2007, Applicant filed an Amendment in response to the Office of Action mailed October 23, 2006, or within the three month period set for reply. However, a Petition for Extension of Time (three months) was mistakenly filed. Copies of all documents filed on January 19, 2007, are attached for the convenience of the Office.

### IV. MANNER OF REFUND

Please make the refund by crediting Deposit Account No. 16-1852.

Respectfully submitted,

  
Kathryn K. Lappegard  
Agent for Applicant(s)  
Registration No. 46,857

PIONEER HI-BRED INTERNATIONAL, INC.  
Corporate Intellectual Property  
7250 N.W. 62<sup>nd</sup> Avenue  
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Johnston, Iowa 50131-0552  
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Facsimile: (515) 334-6883

## Patent Electronic Filing

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The USPTO has received your submission at **09:45:01** Eastern Time on **19-JAN-2007** by Deposit Account: 161852.

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Charge any Additional Fees required under 37 C.F.R. Section 1.16 and 1.17

**eFiled Application Information**

EFS ID	1449991
Application Number	10606877
Confirmation Number	5242
Title	Method of improving animal tissue quality by supplementing the animal diet with mixed tocotrienols
First Named Inventor	Fred R. Wolf
Customer Number or Correspondence Address	27310
Filed By	Kathryn K. Lappegard./Sheri Biller
Attorney Docket Number	1437
Filing Date	25-JUN-2003
Receipt Date	19-JAN-2007
Application Type	Utility

**DOCKETED**

JAN 22 2007

**Application Details**

Submitted Files	Page Count	Document Description	File Size	Warnings
1437_TransmittalForm011907.pdf	1	Miscellaneous Incoming Letter	115106 bytes	◆ PASS
1437_PetExtensionTime011907.pdf	1	Extension of Time	129777 bytes	◆ PASS
1437_Amd011907.pdf	10		148211 bytes	◆ PASS
		Document Description	Page Start	Page End
		Amendment - After Non-Final Rejection	1	1
		Claims	2	3
		Applicant Arguments/Remarks Made in an Amendment	4	10
fee-info.pdf	2	Fee Worksheet (PTO-06)	8190 bytes	◆ PASS

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New Applications Under 35 U.S.C. 111

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National Stage of an International Application under 35 U.S.C. 371

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- Send general questions about USPTO programs to the USPTO Contact Center (UCC).
- If you experience technical difficulties or problems with this application, please report them via e-mail to Electronic Business Support or call 1 800-786-9199.

<b>Electronic Acknowledgement Receipt</b>	
<b>EFS ID:</b>	1449991
<b>Application Number:</b>	10606877
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	5242
<b>Title of Invention:</b>	Method of improving animal tissue quality by supplementing the animal diet with mixed tocotrienols
<b>First Named Inventor/Applicant Name:</b>	Fred R. Wolf
<b>Customer Number:</b>	27310
<b>Filer:</b>	Kathryn K. Lappegard / Sheri Biller
<b>Filer Authorized By:</b>	Kathryn K. Lappegard.
<b>Attorney Docket Number:</b>	1437
<b>Receipt Date:</b>	19 JAN-2007
<b>Filing Date:</b>	25 JUN-2003
<b>Time Stamp:</b>	09:46:01
<b>Application Type:</b>	Utility

**Payment Information:**

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Payment was successfully received in RAM	\$ 1020
RAM confirmation Number	1248
Deposit Account	161852
The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows: Charge any Additional Fees required under 37 C.F.R. Section 1.16 and 1.17	

**File Listing:**



Document Number	Document Description	File Name	File Size(Bytes)	Multi Part /zip	Pages (if appl.)
1	Miscellaneous Incoming Letter	1437_TransmittalForm011907.pdf	115106	no	1
<b>Warnings:</b>					
<b>Information:</b>					
2	Extension of Time	1437_PetExtensionTime011907.pdf	129777	no	1
<b>Warnings:</b>					
<b>Information:</b>					
3		1437_Amd011907.pdf	148211	yes	10
<b>Multipart Description/PDF files in .zip description</b>					
<b>Document Description</b>			<b>Start</b>	<b>End</b>	
Amendment - After Non-Final Rejection			1	1	
Claims			2	3	
Applicant Arguments/Remarks Made in an Amendment			4	10	
<b>Warnings:</b>					
<b>Information:</b>					
4	Fee Worksheet (PTO-05)	fee-info.pdf	8190	no	2
<b>Warnings:</b>					
<b>Information:</b>					
<b>Total Files Size (in bytes):</b>			401284		
<p>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</p> <p><b>New Applications Under 35 U.S.C. 111</b>          If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 508), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><b>National Stage of an International Application under 35 U.S.C. 371</b>          If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p>					

PTO/SB/21 (09-04)

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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/606,877
	Filing Date	06/25/2003
	First Named Inventor	Fred R. Wolf
	Art Unit	1615
	Examiner Name	Ahmed, Hasan Syed
	Attorney Docket Number	1437
Total Number of Pages in This Submission	12	

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm	Pioneer Hi-Bred International, Inc.		
Signature	/Kathryn K. Lappegard/		
Printed Name	Kathryn K. Lappegard		
Date	January 19, 2007	Reg. No.	46,857

CERTIFICATE OF TRANSMISSION/MAILING			
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Signature		Date	
Typed or printed name			

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PTO/SB/22 (12-04)  
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<b>PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)</b> <b>FY 2005</b> (Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4218).)		Docket Number (Optional) <b>1437</b>	
Application Number <b>10/806,877</b>		Filed <b>08/25/2003</b>	
For <b>Method of Improving Animal Tissue Quality by Supplementing the Animal Diet with Mixed Tocotrienols</b>			
Art Unit <b>1615</b>		Examiner <b>Ahmed, Hasan Syed</b>	

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):

	Fee	Small Entity Fee	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$120	\$60	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$450	\$225	\$ _____
<input checked="" type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1020	\$510	<b>\$1020</b>
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1590	\$795	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2160	\$1080	\$ _____

☐ Applicant claims small entity status. See 37 CFR 1.27.

☐ A check in the amount of the fee is enclosed.

☐ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number **16-1852**. I have enclosed a duplicate copy of this sheet.

**WARNING:** Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

I am the ☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71  
 Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

☒ attorney or agent of record. Registration Number **46,857**

☐ attorney or agent under 37 CFR 1.34.  
 Registration number if acting under 37 CFR 1.34. \_\_\_\_\_

/Kathryn K. Lappegard/ January 19, 2007  
 Signature Date  
Kathryn K. Lappegard 515-253-5707  
 Typed or printed name Telephone Number

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ Total of 1 forms are submitted.

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/606,877

Confirmation No. : 5242

Applicant : Fred R. Wolf

Filed : 06/25/2003

TC/A.U. : 1615

Examiner : Ahmed, Hasan Syed

Docket No. : 1437

Customer No. : 27310

Title : Method of Improving Animal Tissue Quality by  
Supplementing the Animal Diet with Mixed Tocotrienols**DOCKETED**

JAN 22 2007

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**AMENDMENT**

In response to the Office Action of October 23, 2006, please amend the  
above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on  
page 2 of this paper.

Remarks/Arguments begin on page 4 of this paper.

Serial No. 10/606,877  
Amendment Dated January 19, 2007  
Reply to Office Action of October 23, 2006

**Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

**Listing of Claims:**

1. (Original) A method of improving the tissue quality of an animal, comprising feeding the animal a diet comprising at least 150 ppm mixed tocotrienols.
2. (Original) The method of claim 1 wherein the tissue is meat and the quality of the meat is measured by criteria selected from the group consisting of pH, improved color value, improved oxidative stability, and reduced purge.
- 3-11. (Cancelled)
12. (Original) The method of claim 1 wherein the animal is poultry.
13. (Original) The method of claim 12 wherein the animal is cattle.
14. (Original) The method of claim 1 wherein the diet comprising at least 150 ppm mixed tocotrienols comprises a cereal grain crop genetically modified to have elevated mixed tocotrienol levels.
15. (Original) The method of claim 14 wherein the cereal grain crop is corn.

Serial No. 10/606,877  
Amendment Dated January 19, 2007  
Reply to Office Action of October 23, 2006

16. (Original) The method of claim 1 wherein the diet comprising at least 150 ppm mixed tocotrienols comprises oil from a plant that has been genetically modified to have elevated mixed tocotrienol levels.

17-19. (Cancelled)

20. (Original) A method of improving the tissue quality of an animal, comprising feeding the animal a diet comprising 50 ppm to 500 ppm mixed tocotrienols.

21. (Original) The method of claim 20 wherein the tissue is meat and the quality of the meat is measured by criteria selected from the group consisting of increased pH, improved color value, improved oxidative stability and reduced purge.

22-26. (Cancelled)

27. (Original) The method of claim 20 wherein the diet comprising 50 ppm to 500 ppm mixed tocotrienols comprises a cereal grain crop genetically modified to have elevated mixed tocotrienol levels.

28. (Original) The method of claim 27 wherein the cereal grain crop is corn.

29. (Original) The method of claim 20 wherein the diet comprising 50 ppm to 500 ppm mixed tocotrienols comprises an oil from a plant that has been genetically modified to have elevated mixed tocotrienol levels.

30-32. (Cancelled)

Serial No. 10/606,877  
Amendment Dated January 19, 2007  
Reply to Office Action of October 23, 2006

### REMARKS/ARGUMENTS

Reconsideration of the present application is respectfully requested. With this amendment, claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are pending.

Claims 3-11, 17-19, 22-26, and 30-32 are cancelled as drawn to non-elected inventions.

#### ***Claim Rejections - 35 USC §103***

Claims 1, 2, 12, 13, 20, and 21 are rejected under 35 USC §103(a) as being unpatentable over Saunders, *et. al.* (US Patent No. 6,977, 269).

The Office Action states: "Saunders, *et. al.* disclose a method of improving the tissue quality of an animal - including the ruminant cattle of instant claims 12 and 13 ... by feeding the animal vitamin E.... While Saunders *et. al.* do not explicitly teach all the instant claimed concentration of tocotrienols, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine suitable concentration through routine or manipulative experimentation to obtain the best possible results, as these are variable parameters attainable within the art.... Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant concentration."

The Office Action concludes: "It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use tocotrienols as a method of improving cattle meat quality, as taught by Saunders, *et. al.* One of ordinary skill in the art at the time the invention was made would have been motivated to add tocotrienols to an animal feed for the beneficial effects of improved meat quality, as explained by Saunders, *et. al.*"

The rejection is respectfully traversed.

As the instant specification, knowledge of one of skill in the art, and the cited reference make clear, the words "Vitamin E", "tocopherol", and "tocotrienol" are not analogous terms.

Serial No. 10/606,877  
Amendment Dated January 19, 2007  
Reply to Office Action of October 23, 2006

"Vitamin E" is an umbrella expression for "...a class of lipid-soluble anti-oxidants that includes  $\alpha$ ,  $\beta$ ,  $\gamma$ , and  $\delta$ -tocopherols and  $\alpha$ ,  $\beta$ ,  $\gamma$ , and  $\delta$ -tocotrienols.... Vitamin E is more appropriately defined chemically as alpha-tocopherol." (See Eenennaam et al, paragraph [0004]). Both the instant specification and the cited reference differentiate between the tocopherols and tocotrienols e.g.: "...vitamin E in the form of alpha-tocopherol acetate...." (See Saunders et. al., col.1, lines 41-41, and the instant specification paragraph [0008]).

Saunders et. al. teaches the danger in assuming the efficacy of any particular Vitamin E anti-oxidant compound without experimental validation. Saunders et. al. recites in col 3, lines 49-51 and lines 58-61: "Gamma-tocopherol ( $\gamma$ -tocopherol) has heretofore been believed to be a weaker anti-oxidant than alpha-tocopherol ( $\alpha$ -tocopherol) on a per unit mass basis and thus, less effective as a dietary supplement for animals.... Applicants have found that, surprisingly, supplementation of animal diets with gamma-tocopherol results in statistically significant improvements in certain tissue quality parameters."

Tocotrienols are not even mentioned in Saunders et. al. and so could not have motivated one of skill in the art to add tocotrienols to an animal feed for the beneficial effects of improved meat quality as recited in the Office Action. Accordingly, claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are not obvious in view of the cited art.

Claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are rejected under 35 USC 103(a) as being unpatentable over Saunders, et. al. in view of Eenennaam et. al.

The Office Action states: "Eenennaam, et. al. teach transgenic plants modified to express polypeptides of the tocopherol biosynthesis pathway.... The disclosure recited transgenic plants modified to have elevated mixed tocotrienol levels (see paragraphs 217-220). The plant may be the cereal grain crop corn of instant claims 14, 15, 27, and 28 (see paragraph 211)."



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The Office Action continues: "The *Eenennaam et. al.* reference teaches an animal diet comprising mixed tocotrienols comprising oil from a plant that has been genetically modified to have elevated mixed tocotrienol levels, as recited in instant claims 16 and 29.

The Office Action concludes: "It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use tocotrienols as a method of improving cattle meat quality, as taught by Saunders, *et. al.* in view of *Eenennaam, et. al.* One of ordinary skill in the art at the time the invention was made would have been motivated to add tocotrienols to an animal feed for the beneficial effects of improved meat quality, as explained by Saunders, *et. al.*"

The rejection is respectfully traversed.

The disclosure of Saunders *et. al.*, as discussed above, does not teach the use of tocotrienols in feed to improve meat quality.

*Eenennaam et. al.* does not present reasoning, citations, or evidence that the transgenic plants disclosed therein contain elevated levels of tocotrienols. The claims and sections of the cited specification that disclose elevated levels of tocotrienols are a mere laundry list of desired phenotypes. *Eenennaam et al* discloses data showing elevated levels of *tocopherols* in the disclosed transgenic plants but no data regarding elevated levels of *tocotrienols*. It being a routine matter to also assay for elevated tocotrienols, it can be inferred that the transgenic plants of *Eenennaam et. al.* did not have elevated levels of tocotrienols.

Therefore, one of skill in the art could not use Saunders, *et al* or *Eenennaam et al*, alone or combined, with any reasonable expectation of success to produce the present invention. Accordingly, claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are not obvious in view of the cited art.

In view of the above remarks, it is submitted that the rejections under 35 USC §103(a) should be withdrawn.

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### ***Double Patenting***

Claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are rejected on the ground of nonstatutory obviousness-type double patenting. The claims are rejected as unpatentable over claims 1-38 of US Patent No. 6,977,269 ('269).

The Office Action states: "Although the conflicting claims are not identical, they are not patentable distinct from each other because '269 claims a method of improving the tissue quality of an animal, including ruminant animals, using a tocopherol. See claims 1 and 8."

The rejection is respectfully traversed.

As the instant specification, knowledge of one of skill in the art, and the cited reference make clear, the words "Vitamin E", "tocopherol", and "tocotrienol" are not analogous terms.

The '269 patent teaches the use of a specific compound: gamma-tocopherol ( $\gamma$  tocopherol) added to animal diets to improve meat quality. The '269 patent does not teach or suggest the use of tocotrienols in animal feed to improve meat quality. The '269 patent is patentably distinct from the instant application. Accordingly, claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are not obvious in view of the cited art.

Claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting. The claims are provisionally rejected as unpatentable over claims 1-38 of copending Application No. 11/153,462 ('462).

The Office Action states: "Although the conflicting claims are not identical, they are not patentable distinct from each other because '462 claims a method of improving the tissue quality of an animal, including cattle, using a tocopherol. See claims 1 and 8."

The rejection is respectfully traversed

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Application number 11/153,462 ('462) is a continuation of the '269 patent cited above. As there is no additional disclosure in this application from the parent, the same points regarding the '269 patent apply. Accordingly, claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are not obvious in view of the cited art.

Claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting. The claims are provisionally rejected as unpatentable over claims 1-27 of copending Application No. 11/153,463 ('463).

The Office Action states: "Although the conflicting claims are not identical, they are not patentable distinct from each other because '463 claims a method of improving the tissue quality of an animal, including ruminant animals, using mixed tocotrienols. See claims 1, 12, and 19."

The rejection is respectfully traversed.

The '463 application does not disclose or claim an animal diet using mixed tocotrienols alone. The '463 application discloses and claims an animal diet with a mix of oleic acid and selected tocots ("selected tocots" being defined as: "...one or more of the tocotrienols (TT), gamma-tocopherol (GT), or a mixture of at least one tocotrienol and gamma-tocopherol. The selected tocots may contain other components, including other tocopherols." See page 3, lines 5-8) As such, the '463 application is patentably distinct from the instant application.

Accordingly, claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are not obvious in view of the cited art.

Claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting. The claims are provisionally rejected as unpatentable over claims 1-20 of copending Application No. 11/530,075 ('075).

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The Office Action states: "Although the conflicting claims are not identical, they are not patentable distinct from each other because '075 claims a method of improving the tissue quality of an animal, including ruminant animals, using mixed tocotrienols. See claims 1, 10, and 13."

The rejection is respectfully traversed.

The '075 application does not disclose or claim an animal diet using mixed tocotrienols alone. The '075 application teaches: "...use of a high-oleic and high-tocol animal diet in combination with an additional non-tocol antioxidant such as rosemary extract to achieve a greater improvement in meat oxidative stability than can be achieved with dietary high-oleic and high-tocol or the additional non-tocol antioxidant alone." (see page 1, lines 15-20). As such, the '075 application is patentably distinct from the instant application.

Accordingly, claims 1, 2, 12, 13, 14-16, 20, 21, and 27-29 are not obvious in view of the cited art.

In view of the above remarks, it is submitted that the rejections under nonstatutory obviousness-type double patenting should be withdrawn.

#### CONCLUSION

In view of the above amendments and remarks, it is submitted that the rejections of the claims under USC 103(a) and nonstatutory obviousness-type double patenting are overcome. It is respectfully submitted that this application is now in condition for allowance.

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If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned.

Respectfully submitted,

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## Electronic Patent Application Fee Transmittal

<b>Application Number:</b>	10606877			
<b>Filing Date:</b>	25-Jun-2003			
<b>Title of Invention:</b>	Method of improving animal tissue quality by supplementing the animal diet with mixed tocotrienols			
<b>First Named Inventor/Applicant Name:</b>	Fred R. Wolf			
<b>Filer:</b>	Kathryn K. Lappegard./Sheri Biller			
<b>Attorney Docket Number:</b>	1437			
Filed as Large Entity				
<b>Utility Filing Fees</b>				
<b>Description</b>	<b>Fee Code</b>	<b>Quantity</b>	<b>Amount</b>	<b>Sub-Total in USD(\$)</b>
<b>Basic Filing:</b>				
<b>Pages:</b>				
<b>Claims:</b>				
<b>Miscellaneous-Filing:</b>				
<b>Petition:</b>				
<b>Patent-Appeals-and-Interference:</b>				
<b>Post-Allowance-and-Post-Issuance:</b>				
<b>Extension-of-Time:</b>				
Extension - 3 months with \$0 paid	1253		1020	1020

Adjustment Date: 02/06/2007 SDIRETAL 10606877  
01/19/2007 INTFFSH 00001248 16185P  
01 FC:1253 -1080.00 CR

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Miscellaneous:				
Total in USD (\$)				1020

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